CRIMINAL REVISION.

Tengku Ahmad Rithauddeen (Deputy Public Prosecutor) for the Public Prosecutor.

Wan Mustapha bin Haji Ali for the accused.

Hashim J.: I called for the record of this case.

The accused was charged for being found in possession of a "keris", an offence punishable under section 6(1) of the Corrosive and Explosive Substances and Offensive Weapons Ordinance No. 43 of 1958. He pleaded guilty and the learned magistrate bound him over in the sum of $500 with one surety for one year under section 173A of the Criminal Procedure Code (Cap. 6). There is nothing in the record to show what the "finding" of the magistrate was under section 173(b) of the Criminal Procedure Code (Cap. 6). In this case as the magistrate elected to act under the provisions of section 173A of the Criminal Procedure Code (Cap. 6) he should have recorded that the charge was proved.

The facts in this case are that a police party saw the accused walking along the main road at Kampong Padang Tok Mat, Ketereh at 9.15 p.m. on 9th February, 1964. Accused was stopped, searched and the keris was found stuck in his waist. The magistrate was informed in court by the accused that the keris had been borrowed from him by a friend for a marriage ceremony. It was returned to him that night and he was taking it home when the police party stopped him. It should be noted that a charge under section 6 (1) of Ordinance No. 43 of 1958 is of a technical nature and where the accused is not represented by counsel it is the duty of the trial magistrate to satisfy himself that the accused understands the technical nature of the charge before accepting his plea. Section 6(1) states *inter alia* "otherwise than with lawful authority or for a lawful purpose" and section 6(2) of the Ordinance states that the onus of proving the existence of a lawful purpose shall lie upon the accused. In my opinion the accused in this case made a qualified plea of guilty and the magistrate should not have accepted his plea. He should have proceeded with the hearing of the case and allowed the accused to prove the lawful purpose of carrying a keris. In my opinion it was lawful for the accused to carry his keris home if he had lent it to a friend for use in a marriage ceremony. It is a well-known fact that the keris forms part of the bridegroom's regalia at a "bersanding" ceremony.

In exercise of my powers of revision I quash the sentence imposed by the trial magistrate and the accused is discharged from the charge, such discharge not amounting to an acquittal.

Sentence quashed.

Solicitors: *Wan Mustapha & Co.*

PUBLIC PROSECUTOR v. WAHAB

[R.Cr.J. (Hashim J.) May 2, 1964]

[Kota Bharu — Criminal Revision No. 9 of 1964]

Criminal Procedure — Whipping — Criminal Procedure Code (Cap. 6), s. 293(i)(c).

Offensive weapon — Possession of — "Liable to imprisonment and to whipping" — Whether imprisonment mandatory — Corrosive and Explosive Substances and Offensive Weapons Ordinance, 1958, s. 6(1).

A magistrate should clear the court-house before a sentence of whipping is imposed. The accused should first be examined by a medical officer to find out whether he is fit to be whipped. Then the whipping should be done in the magistrate's presence in a closed court-house. There should be present only the magistrate, the accused and the person who is going to execute the order of whipping and if necessary the medical officer.

It is wrong to order whipping under section 293 (i)(c) of the Criminal Procedure Code of an accused person of 19 years of age.

The provision in section 6(1) of the Corrosive and Explosive Substances and Offensive Weapons Ordinance that on conviction an accused shall be liable to imprisonment for a term not exceeding two years and to whipping is not mandatory and a fine may be imposed in lieu of imprisonment.

CRIMINAL REVISION.

Tengku Ahmad Rithauddeen (Deputy Public Prosecutor) for the Public Prosecutor.

Respondent in person.

Hashim J.: I called for the record of this case.

The accused was charged under section 6(1)(a) of the Corrosive and Explosive Substances and Offensive Weapons Ordinance No. 43 of 1958. Incidentally there is no such section as section 6(1)(a) in Ordinance No. 43 of 1958. There is section 6(1) which deals with carrying offensive weapons in public places and section 6A(1) which deals with offences relating to scheduled weapons. In this case the accused was charged with possession of a "pisau jam", presumably a kind of knife. I do not think a "pisau jam" is a "flick knife" or a "gravity knife" and therefore the appropriate section should be section 6(1) of the Ordinance. He pleaded guilty to the charge. The learned magistrate accepted the plea of guilty and ordered that accused be whipped with 4 strokes of a light rattan. This presumably was done in the magistrate's presence in court. Incidentally a magistrate should clear the court-house before sentence of whipping is imposed. The accused should first be examined by a medical officer to find out whether the accused is fit to be

whipped. Then the whipping should be done in the magistrate's presence in a closed court-house. There should be present only the magistrate, the accused and the person who is going to execute the order of whipping and if necessary the medical officer.

In this case the accused appeared to be 19 years old at the time of the carrying out the sentence of whipping. Presumably the order of whipping was under section 293(i)(c) of the Criminal Procedure Code (Cap. 6). This section deals with youthful offenders only. "Youthful offender" is defined in section 2 of the Criminal Procedure Code (Cap. 6) as a child who is above the age of 7 and under the age of 16 years. Therefore the magistrate was wrong to order whipping under section 293(i)(c) of the Criminal Procedure Code (Cap. 6) in respect of an accused person of 19 years of age. Now section 6(1) of the Ordinance states *inter alia* that on conviction be *liable* to imprisonment for a term not exceeding two years and to whipping. My interpretation of this section is that the term of imprisonment is not mandatory and a fine may be imposed in lieu of imprisonment. In exercise of my powers of revision I enhance the sentence by imposing a fine of $50 in default 3 months imprisonment. The sentence of whipping to stand. I also direct that the charge be amended by deleting the letter '(a)' after "section 6(1)".

Order accordingly.

RE MARIA MENADO

[O.C.J. (Winslow J.) May 6, 1964]

[Singapore — Originating Motion No. 5 of 1964]

Practice and Procedure — Shariah Court — Process of Court — Substituted service outside State — Whether service valid — Whether appearance to contest amounts to submission to jurisdiction — Muslims Ordinance, 1957, ss. 26, 27 — Muslim Marriage and Divorce Rules, 1959, r. 27.

Muslims Ordinance, 1957, s. 26 — Shariah Court — Jurisdiction of President — Order of prohibition against President.

Section 26 of the Muslims Ordinance, 1957, provides:

"(1) Process of the court shall be served by an officer of the court or by any other person expressly authorised by the court to serve the same, and may be served at any place within the Colony.

(2) Service shall be personal, unless for special reasons the court shall order substituted service. Substituted service shall be effected in such manner as the court may order and shall then be as effective as personal service.

(3) Personal service shall be effected by handing to the person to be served the original or a sealed and signed copy of the document to be served. If the person to be served refuses to accept a document it may be brought to his notice and left near him.

(4) A person who has served any document or proceeding shall forthwith file in court a memorandum showing the place, time and method of service.

(5) Service shall be proved where necessary by oral evidence."

Rule 27 of the Muslim Marriage and Divorce Rules states: "In matters of practice and procedure not expressly provided for in these rules, the court may adopt the practice and procedure in civil proceedings for the time being in force in the Civil District Courts."

This was an application for an order of prohibition to be directed to the learned president of the Shariah court to prohibit the said court from proceeding with the hearing of a summons based on the purported service of the said summons pursuant to an order of substituted service outside the State made by the said learned president on March 13, 1964.

Held: substituted service can only be effected and become effective within the State because section 26 of the Muslims Ordinance expressly limits the area of service to the territorial confines of the State and this jurisdiction was not enlarged by rule 27 of the Muslim Marriage and Divorce Rules. Prohibition to lie.

Per Winslow J.: "The result of my decision may be to deprive male Muslims of the immediate and effective pursuit of their remedies within the State, in cases where their spouses have decided to leave the jurisdiction by deliberately crossing the causeway. It may perhaps be some solace to reflect that it is unlikely that little more than a very few women will normally find themselves entrenched in the sacrosanct position which the applicant at present appears to enjoy and correspondingly few men are accordingly likely to be affected, in any adverse manner, by the caprice of their itinerant spouses."

Cases referred to:—

(1) *In re King & Co.'s Trade-Mark* [1892] 2 Ch. 462, 483.

(2) *De Gasquet James* v. *Mecklenburg-Schwerin* [1914] P. 53, 64.

(3) *Harris* v. *Taylor* [1915] 2 K.B. 580.

(4) *In re Dulles' Settlement (No. 2)* [1951] Ch. 842.

APPLICATION FOR ORDER OF PROHIBITION.

David Marshall (*J. B. Jeyaretnam* with him) for the applicant.

Tan Boon Teik (Solicitor-General) for the respondent.

Cur. Adv. Vult.

Winslow J.: The applicant in this case asks for an order of prohibition to be directed to the learned president of the Shariah Court to prohibit the said court from proceeding with the hearing of Shariah Court Summons No. 7 of 1964 based on the purported service of the said summons pursuant to an order for substituted service outside the State made by him on 13th March 1964.

The Muslims Ordinance (No. 25 of 1957) makes no direct provision for service outside the jurisdiction of a summons of this nature by the Shariah Court and I am asked by the learned Solicitor-General to hold that, where the provisions of the Ordinance are not exhaustive as to procedural matters, recourse may be had to the law of Islam.